

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ORVILLE MEAUX,

No. C 05-3733 CW

Plaintiff,

v.

ORDER GRANTING
DEFENDANT
EDMUNDSON'S MOTION
TO DISMISS

NORTHWEST AIRLINES, INC.; ERIC
EDMUNDSON, individually and as an
employee of Northwest Airlines,
Inc.; PROFESSIONAL FLIGHT ATTENDANTS
ASSOCIATION; and DOES 1- 20,
Inclusive,

Defendants.

Defendant Eric Edmundson moves to dismiss all claims against him, or, in the alterative, to stay them pending the resolution of the bankruptcy proceeding of Defendant Northwest Airlines, Inc. Plaintiff Orville Meaux opposes this motion. The matter was heard on April 28, 2006. Having considered all of the papers filed by the parties and oral argument on the motion, the Court grants Defendant Edmundson's motion.

BACKGROUND

1
2 In June, 2004, Plaintiff filed a complaint against Defendant
3 Northwest and Does 1 through 10 in San Francisco Superior Court.
4 The complaint alleged causes of action for breach of an implied-in-
5 fact contract, breach of the implied covenant of good faith and
6 fair dealing, violation of Title VII of the 1964 Civil Rights Act
7 and violation of California's Fair Employment and Housing Act
8 (FEHA). According to Plaintiff, Defendant Northwest harassed,
9 discriminated against, disciplined and, on January 26, 2004,
10 terminated him without cause, because of his race. Plaintiff also
11 alleged that he was retaliated against for engaging in protected
12 activity, namely, previously filing a discrimination suit against
13 Defendant Northwest. Although Defendant Edmundson was not named as
14 a defendant, Plaintiff alleged that "Eric Edmundson was a Base
15 Administrator for defendant, plaintiff's supervisor, and an agent
16 and or employee of defendant Northwest Airlines, Inc., and in doing
17 the acts complained of herein was acting in the course and scope
18 of his capacity in such agency or employment." Bowman Dec.,
19 Ex. A ¶ 8.

20 Defendant Northwest removed Plaintiff's complaint to this
21 Court, where it was assigned number C 04-4444 CW. Defendant
22 Northwest filed a motion to dismiss Plaintiff's contract claims on
23 the ground that they were preempted by the Railway Labor Act (RLA),
24 45 U.S.C. § 151. Before the motion was heard, Plaintiff stipulated
25 to dismiss his contract claims. Plaintiff filed his Amended
26 Complaint for Damages and Injunctive Relief for Employment
27 Discrimination. After Defendant Northwest filed its answer, a case
28

1 management conference was held and deadlines were set: additional
2 parties or claims were to be added by March 4, 2005; dispositive
3 motions were to be heard by September 30, 2005.

4 No additional parties were added. Defendant Northwest noticed
5 its motion for summary judgment to be heard on September 30, 2005.
6 Plaintiff's opposition was due on September 9, 2005, but he failed
7 to file an opposition or a statement of non-opposition.

8 On September 14, 2005, Defendant Northwest filed a highly
9 publicized bankruptcy petition. On September 15, 2005, Plaintiff
10 filed this complaint against Defendant Northwest,¹ Defendant
11 Edmundson and the Professional Flight Attendants Association,
12 without filing a notice of related cases pursuant to Local Rule 3-
13 12.² He brought claims for violations of the RLA, wrongful
14 discharge in violation of public policy and breach of the implied
15 covenant of good faith and fair dealing. Unlike his first
16 complaint, this complaint did not allege employment discrimination,
17 but the facts in the two complaints are largely the same. Both
18 cases stem from Plaintiff's discipline and termination that related
19 to a customer complaint. This case was originally assigned to
20 Judge Illston.

21 On September 20, 2005, due to Plaintiff's failure to file an
22

23 ¹On February 3, 2006, Plaintiff filed a notice that he had not
24 served Defendant Northwest with the summons and complaint because
25 it had filed for bankruptcy and thus Plaintiff's action against it
was automatically stayed pursuant to section 362 of the Bankruptcy
Code.

26 ²Local Rule 3-12 provides that when a party knows or learns
27 that an action is, or may be, related to a action already pending
in this district, that party must promptly file a notice of related
cases.

1 opposition to Defendant Northwest's motion for summary judgment in
2 the first case, this Court issued an order vacating the September
3 30, 2005 hearing and requiring Plaintiff to show cause why his case
4 should not be dismissed for failure to prosecute. On September 27,
5 2005, the Court issued an order, in light of Defendant Northwest's
6 bankruptcy, conditionally closing the case and vacating the order
7 to show cause.

8 In March, 2006, after Defendant Edmundson filed this motion to
9 dismiss, he filed a motion to relate Plaintiff's cases. On
10 March 28, 2006, the Court signed the Related Case Order, and this
11 case was reassigned to the undersigned.

12 LEGAL STANDARD

13 A motion to dismiss for failure to state a claim will be
14 denied unless it is "clear that no relief could be granted under
15 any set of facts that could be proved consistent with the
16 allegations." Falkowski v. Imation Corp., 309 F.3d 1123, 1132 (9th
17 Cir. 2002), citing Swierkiewicz v. Sorema N.A., 534 U.S. 506
18 (2002). All material allegations in the complaint will be taken as
19 true and construed in the light most favorable to the plaintiff.
20 NL Indus., Inc. v. Kaplan, 792 F.2d 896, 898 (9th Cir. 1986).

21 A complaint must contain a "short and plain statement of the
22 claim showing that the pleader is entitled to relief." Fed. R.
23 Civ. P. 8(a). "Each averment of a pleading shall be simple,
24 concise, and direct. No technical forms of pleading or motions are
25 required." Fed. R. Civ. P. 8(e). These rules "do not require a
26 claimant to set out in detail the facts upon which he bases his
27 claim. To the contrary, all the Rules require is 'a short and
28

1 plain statement of the claim' that will give the defendant fair
2 notice of what the plaintiff's claim is and the grounds on which it
3 rests." Conley v. Gibson, 355 U.S. 41, 47 (1957).

4 When granting a motion to dismiss, a court is generally
5 required to grant a plaintiff leave to amend, even if no request to
6 amend the pleading was made, unless amendment would be futile.
7 Cook, Perkiss & Liehe, Inc. v. N. Cal. Collection Serv. Inc., 911
8 F.2d 242, 246-47 (9th Cir. 1990). In determining whether amendment
9 would be futile, a court examines whether the complaint could be
10 amended to cure the defect requiring dismissal "without
11 contradicting any of the allegations of [the] original complaint."
12 Reddy v. Litton Indus., Inc., 912 F.2d 291, 296 (9th Cir. 1990).
13 Leave to amend should be liberally granted, but an amended
14 complaint cannot allege facts inconsistent with the challenged
15 pleading. Id. at 296-97.

16 DISCUSSION

17 Defendant Edmundson argues that Plaintiff's claims against him
18 are void because they violate the bankruptcy stay and are barred by
19 the rule against claim splitting. He further argues that he cannot
20 be individually liable as a matter of law for any of Plaintiff's
21 asserted claims; that Plaintiff has failed to identify a public
22 policy in his claim for wrongful discharge; and that Plaintiff's
23 claims for wrongful discharge and breach of the covenant of good
24 faith and fair dealing are preempted by the RLA.

25 I. Bankruptcy Stay

26 Defendant Edmundson argues that Plaintiff's complaint against
27 him should be dismissed because, like the second-filed complaint in
28

1 Bihari v DDJ Capital Management, 306 B.R. 336 (E.D. Cal. 2004), it
2 is merely an attempt to avoid the bankruptcy stay issued in
3 Plaintiff's first action. In Bihari, the plaintiff filed a
4 complaint against his employer alleging that he had not been
5 compensated for his overtime work. While that action was pending,
6 the employer filed a bankruptcy petition, resulting in a stay of
7 the action. The plaintiff then filed a new complaint against the
8 employer's shareholders, directors and officers, again alleging
9 that he was not compensated for overtime work. Id. at 337. After
10 reviewing the two complaints, the court found that the plaintiff's
11 second complaint was "an attempt to avoid the stay issued in the
12 first action." Id. at 338. Because there was such identity
13 between the employer and the defendants in the second action, the
14 court further found that the employer was the real party defendant
15 in the second action and thus a judgment against its shareholders,
16 directors and officers would, in effect, be a judgment or finding
17 against the employer. Allowing the second action to proceed would
18 defeat the purpose of a bankruptcy stay, and thus the court found
19 the second complaint violated the stay and was void. See id. ("The
20 law in this circuit is that violations of the stay are void.")
21 (quoting In re Schwartz, 954 F.2d 571, 574 (9th Cir. 1992)). The
22 action was dismissed with prejudice to amending the complaint in
23 the second action, but without prejudice to the plaintiff's pursuit
24 of his claims in the bankruptcy litigation and in the first action.

25 Defendant Edmundson notes that, although the claims in the
26 two suits may not be the same, Plaintiff's claims in the second
27 suit arise out of the same set of facts as those in the first suit.

1 He argues that the present case closely parallels Bihari and thus
2 Plaintiff's claims against him should be dismissed. Plaintiff's
3 attempt to distinguish Bihari because, here, Defendant Edmundson is
4 a "mere employee" is not convincing. As Defendant Edmundson notes,
5 the authorities cited in his moving papers do not turn on the rank
6 of the individual defendants, but rather on the identity of the
7 interests between them and the debtor corporation. Defendant
8 Edmundson was a manager, who, Plaintiff alleged in his first
9 action, was acting in the course and scope of his employment; a
10 judgment against Defendant Edmundson could be a judgment against
11 Defendant Northwest.

12 It may not be as clear as it was in Bihari that Plaintiff's
13 filing of the second action was solely an attempt to avoid the
14 stay. Plaintiff notes that Defendant Northwest did not serve
15 notice of the bankruptcy until five days after he filed his second
16 complaint. Regardless of when Plaintiff was served official notice
17 of the bankruptcy, Plaintiff's filing of this action the day after
18 Defendant Northwest filed for bankruptcy was a violation of the
19 bankruptcy stay. Plaintiff does not deny knowing that Defendant
20 Northwest filed for bankruptcy the day before he filed this action.
21 Nor does he explain why he did not oppose the summary judgment
22 motion in the first action. He does not explain why he missed the
23 March 4, 2005 deadline to add parties or claims in his first action
24 and why he filed another action, instead of seeking leave to amend
25 his complaint to add additional parties. Because Plaintiff's
26 filing of this action violated the bankruptcy stay, that filing is
27
28

1 void and the claims against Defendant Edmundson are dismissed.

2 Bihari, 306 B.R. at 339.

3 II. Claim Splitting

4 Defendant Edmundson also argues that the second suit, which
5 names him, is barred by the rule against claim splitting. As noted
6 above, both actions arise from Plaintiff's discipline and
7 termination by Defendant Edmundson; the same underlying facts
8 support the claims in both actions.

9 Plaintiff does not deny that he split his claims. Rather he
10 points out that the "doctrine against splitting a cause of action
11 is, in part, a rule of judicial economy that is imposed in
12 particular cases as a matter of discretion. It can be waived." In
13 re Wilson, 104 B.R. 303, 304 (E.D. Cal. 1989). Plaintiff further
14 notes that a court has discretion to order consolidation, pursuant
15 to Federal Rule of Civil Procedure 42, instead of dismissal. And
16 he requests that the Court consolidate his two cases for purposes
17 of trial and judgment. But Plaintiff's argument, that
18 consolidation is appropriate because dismissal of this case would
19 be an unwarranted remedy for a "technical error in pleading," is
20 not persuasive.

21 The court in Wilson did not consolidate the plaintiff's two
22 actions because factors in the case made it "inconvenient or
23 inappropriate to consolidate." Id. at 305. In dismissing the
24 duplicative action, the court noted, "The doctrine against
25 splitting applies with its greatest force where, as in the case at
26 bar, multiple lawsuits on the same cause of action are pending in
27
28

1 the same court simultaneously." Id. Defendant Edmundson contends
2 that is the case here. He points to factors in this case that make
3 consolidation inappropriate: the deadline to add parties or claims
4 in Plaintiff's first case was March 4, 2005 and, instead of seeking
5 leave to amend his complaint, Plaintiff just filed another action;
6 had Plaintiff timely brought Defendant Edmundson into the first
7 case, Defendant Northwest's bankruptcy stay may have extended to
8 Plaintiff's entire claim. While Defendant Edmundson notes factors
9 that make consolidation inappropriate, Plaintiff fails to provide
10 any factor that would make dismissal inappropriate. Plaintiff's
11 unexplained abandonment of his first action and then subsequent
12 bringing of this action based on the same underlying facts as the
13 first action is not, as Plaintiff contends, a technical error in
14 pleading. Like in Wilson, the factors in this case make
15 consolidation inappropriate. The Court finds that Plaintiff's
16 claim-splitting provides another reason to dismiss the claims
17 against Defendant Edmundson.

18 III. Defendant Edmundson's Remaining Arguments

19 Because the Court grants Defendant Edmundson's motion to
20 dismiss based on the two grounds discussed above, the Court need
21 not discuss Defendant Edmundson's remaining arguments.³

22
23
24 ³The Court, however, notes that Plaintiff's claim for breach
25 of the implied covenant of good faith and fair dealing is preempted
26 by the RLA. See, e.g., Milne Employees Ass'n v. Sun Carrier, Inc.,
27 960 F.2d 1401, 1411 (9th Cir. 1992). Plaintiff's claim for
28 wrongful termination also fails because Defendant Edmundson cannot
be held individually liable for Plaintiff's alleged termination in
violation of airline safety public policy. See, e.g., Jacobs v.
Universal Development Corp., 53 Cal. App. 4th 692 (1997).

CONCLUSION

For the foregoing reasons, the Court GRANTS Defendant Edmundson's motion to dismiss (Docket No. 25). The Court dismisses with prejudice Plaintiff's claims against Defendant Edmundson in this action. Thus, any claims against Defendant Edmundson in Plaintiff's amended complaint that Plaintiff is seeking leave to file are dismissed with prejudice. This dismissal is without prejudice to Plaintiff's pursuit of his claims in the bankruptcy litigation or in the first action.

IT IS SO ORDERED.

Dated: 7/6/06



CLAUDIA WILKEN
United States District Judge